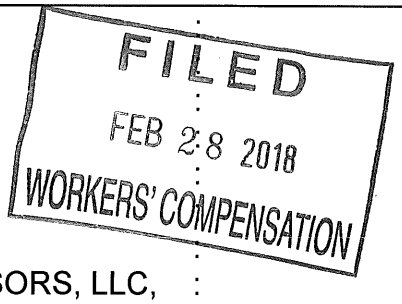
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



PAUL TER, Claimant, vs. QUALITY FOOD PROCESSORS, LLC, Employer, and GENERAL CAS. CO. OF WISCONSIN, Insurance Carrier, Defendants.	:	File No. 5060134 ARBITRATION DECISION Head Note Nos.: 1802; 3000; 4000

STATEMENT OF THE CASE

Claimant, Paul Ter, filed a petition in arbitration seeking workers' compensation benefits from Quality Food Processors, LLC the employer and General Casualty Co. of Wisconsin, the insurance carrier.

On November 3, 2017, claimant filed an Original Notice and Petition in arbitration seeking workers' compensation benefits, which was served on the employer on November 8, 2017. Defendants failed to answer or otherwise plead in response thereto. On November 29, 2017, claimant properly served a Notice of Intent to File Written Application for Default and Request for Hearing. Again, no answer or other pleading was filed by defendants. On December 14, 2017, claimant filed his Written Application for Default. The same was served on defendants who did not file any answer or other pleading. On January 18, 2018, claimant's application for default was granted and the matter was scheduled for a hearing on damages on February 21, 2018. On the date of the hearing, the undersigned confirmed that the administrative file contained no answer, appearance or any pleading or filing from defendants. The matter proceeded to telephonic hearing.

The telephone hearing occurred on February 21, 2018. The proceedings were recorded digitally, and constitute the official record of the proceeding. The record includes claimant's exhibits 1-9, consisting of 72 pages. The matter was considered fully submitted on the date of the hearing.

ISSUES

Claimant requested that the hearing following entry of default, address and resolve the following issues:

1. Employer/Employee Relationship

2. Whether claimant sustained an injury that arose out of and in the course of his employment with the defendant employer on September 25, 2017.

3. Rate

4. Extent of Healing Period

5. Medical expenses, including mileage.

6. Penalty

7. Costs

FINDINGS OF FACT

After a review of the evidence presented I find as follows:

Claimant began working at Quality Food Processors, LLC during the week of August 12, 2017. His job involved pushing carts of meat weighing at least 50 pounds. (Ex. 1. p. 2)

On September 25, 2017, in the evening, while working for the defendant employer, claimant was pushing a cart of meat and fell on water and landed on his right arm sustaining injury. (Ex. 1, p. 1; Ex. 3, p. 38) He was directed by the employer to the Crawford County Hospital Clinic and transported to the clinic by a co-worker. He was treated at the Emergency Room and x-rays revealed a right wrist intra-articular fracture with an ulnar styloid fracture. (Ex. 1, p. 1; Ex. 8, p. 40)

Based on the uncontroverted evidence, I find that claimant was an employee of the defendant employer at the time of the work injury on September 25, 2017.

I further find that claimant sustained an injury while working for the defendant employer and while carrying out his assigned work activity on September 25, 2017.

Claimant returned to work on September 26, 2017 and was returned to the same job that he had previously, which involved pushing carts of meat.

On September 28, 2017, claimant was seen by Douglas Bolda, M.D., an orthopedic physician who diagnosed a "[r]ight wrist closed distal radius and distal ulna fracture," with some "concern that there may be some articular step-off present not visible on the x-ray." (Ex. 8, p. 42-43) Dr. Bolda stated on October 2, 2017, that he was

"concerned about what [they] are having him do at work. Any force applied to that fragment might increase the amount of displacement." (Ex. 8, p. 46) He further stated that "based on what the patient tells me it is evident that the employer is not complying with my medical recommendation that the patient not use of [sic] his injured right upper extremity. I do not believe it is reasonable for him to have to push a cart that weighs that much and try to control it with one hand." (Id.)

Dr. Bolda took claimant off work from October 2, 2017 through November 13, 2017, during which time he was in a cast for about 6 weeks. (Ex. 8, pp. 46, 47)

On November 14, 2017, claimant was given a return to work note for November 15, 2017 and his assessment was noted as "[h]ealing right distal radius and right ulnar styloid fractures. The patient seems to have healed adequately to return to work." (Ex. 8, p. 57)

Based on the above, I find that claimant was off work per Dr. Bolda from October 2, 2017 through and including November 14, 2017.

On November 15, 2017, claimant returned to work and was placed on a regular production job. (Ex. 1, p. 3) However, on November 16, 2017, claimant called Dr. Bolda's office with complaints of pain while using his right hand and arm at work. He was placed on restrictions of "[n]o lifting, pushing, pulling with the right upper extremity over 2 pounds," and avoid work above floor level. (Ex. 8, p. 59)

Claimant was placed on light duty by his employer and continued working. (Ex. 1, p. 3)

I find that the medical records indicate that the above restrictions assigned by Dr. Bolda on November 16, 2017, have continued and remain unchanged through the date of the hearing. (Ex. 8, p. 59)

On November 28, 2017, and again on February 8, 2018, Dr. Bolda requested an MRI of the wrist to evaluate possible injury of the triangular fibrocartilage. (Ex. 8, pp. 64, 65) Claimant's affidavit indicates that the MRI may have been completed on February 8, 2018, although claimant's arguments at the time of the hearing indicated that the MRI has not yet occurred. (Ex. 1, p. 4)

Claimant did not receive any healing period benefits while he was off work. (Ex. 1, p. 2)

On January 28, 2017, claimant was terminated by his employer based on the allegation that he did not show up for work on the previous day of January 27, 2017. Claimant disputes this and through his affidavit states that he did work on January 27, 2017, and he suggested that merely checking the security camera video would show that he was at work on that day. (Ex. 1, p. 4) Claimant further contends that on January 27, 2017, he forgot his ID so he went to the security office and was signed in and allowed into the building by security and did light duty work in production and then

was moved to light duty work in packaging. He worked an ordinary shift on that day. (Ex. 1, p. 4) Based on the uncontroverted evidence, I find that claimant did work for the defendant employer in his light duty capacity on January 27, 2017.

While employed by the defendant employer, claimant was paid wages as set forth in exhibit 2 and $12.50 per hour prior to the work injury. At the time of the work injury, he was single with no additional dependents and had an average weekly wage of $574.30 producing a weekly workers' compensation benefit rate of $358.98. (Ex. 2, p. 7; Ex. 4, pp. 9-12) I accept claimant's rate calculation as stated above and set forth in Exhibit 2, p. 7)

I find that defendants have failed to respond in this matter and that there is no evidence that they have conducted a reasonable investigation into this matter or that any investigation led to a decision to deny benefits. I further find that defendants have failed to contemporaneously convey the basis for the denial to claimant when the decision to deny benefits was made.

CONCLUSIONS OF LAW

1) Employer/Employee Relationship

The first issue to be determined is whether there is an employer-employee relationship between claimant and the defendant employer.

Factors to be considered in determining whether an employer-employee relationship exists are: (1) the right of selection, or to employ at will, (2) responsibility for payment of wages by the employer, (3) the right to discharge or terminate the relationship, (4) the right to control the work, and (5) identity of the employer as the authority in charge of the work or for whose benefit it is performed. The overriding issue is the intention of the parties. Where both parties by agreement state they intend to form an independent contractor relationship, their stated intent is ignored if the agreement exists to avoid the workers' compensation laws, however. Likewise, the test of control is not the actual exercise of the power of control over the details and methods to be followed in the performance of the work, but the right to exercise such control. Also, the general belief or custom of the community that a particular kind of work is performed by employees can be considered in determining whether an employer-employee relationship exists. Caterpillar Tractor Co. v. Shook, 313 N.W.2d 503 (Iowa 1981); McClure v. Union County, 188 N.W.2d 283 (Iowa 1971); Nelson, 259 Iowa 1209, 146 N.W.2d 261; Lembke v. Fritz, 223 Iowa 261, 272 N.W. 300 (1937); Funk v. Bekins Van Lines Co., I Iowa Industrial Commissioner Report 82 (App. December 1980).

I have found above that claimant began working for the defendant employer during the week of August 12, 2017. I have also found that claimant was paid an hourly wage while he was employed. He was told what department he was to work in. He was terminated by the employer on January 28, 2017. There was no evidence that there was any intent to form any relationship other than an employer/employee relationship. I

conclude that claimant was an employee of the defendant employer on the date of injury of September 25, 2017.

2) Arising Out Of And In The Course Of Employment

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

I conclude that claimant's injury to his right wrist/arm arose out of and in the course of his employment with the defendant employer. This conclusion is supported by the medical records and the affidavit from claimant as discussed above. I further

note that the mechanism of injury concerning falling on his right arm at work is consistent with the reported injury and complaints.

3) Rate

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings is excluded, however. Iowa Code section 85.36(6).

Iowa Code section 85.61 provides:

> 3. *"Gross earnings"* means recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits.

Iowa Code section 85.36 sets forth the basis for determining an injured employee's compensation or rate. Mercy Med. Ctr. v. Healy, 801 N.W.2d 865, 870 (Iowa Ct. App. 2011). The statute expressly provides the determination is made using the last 13 consecutive calendar weeks immediately preceding the injury. Iowa Code § 85.36(6). Under the statute,

> The basis of compensation shall be the weekly earnings of the injured employee at the time of the injury. Weekly earnings means gross salary, wages, or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured, as regularly required by the employee's employer for the work or employment for which the employee was employed, computed or determined as follows and then rounded to the nearest dollar:
>
> . . . .
>
> 6. In the case of an employee who is paid on a daily or hourly basis, or by the output of the employee, the weekly earnings shall be computed by dividing by thirteen the earnings, including shift differential pay but not including overtime or premium pay, of the employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the

> employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings.

Id. The statute defines "gross earnings" as "recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits," and "pay period" as "that period of employment for which the employer customarily or regularly makes payments to employees for work performed or services rendered." Id. § 85.61(3), (5).

In this case, claimant was paid hourly. (Ex. 2, p. 7) The only evidence concerning rate is claimant's rate calculation, which I have accepted above. I therefore conclude that the appropriate rate is $358.98 based upon claimant's rate calculation contained in Exhibit 2, page 7.

4) Extent of Healing Period

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

I have found above that claimant was off work per Dr. Bolda from October 2, 2017 through and including November 14, 2017. (Ex. 8, pp. 46, 47, 57) Claimant returned to work on November 15, 2017 and was working light duty under restrictions of "[n]o lifting, pushing, pulling with the right upper extremity over 2 pounds," and he was to avoid work above floor level. (Ex. 8, p. 59) He was then terminated while on restrictions on January 28, 2017. (Ex. 1, p. 4)

I conclude that claimant was off work from October 2, 2017 through and including November 14, 2017 and from January 28, 2018 to the present. He remains under the above stated work restrictions and continues to receive medical treatment. No physician has placed him at maximum medical improvement (MMI) and I conclude that he has not reached MMI as evidence by Dr. Bolda's request for an MRI. Since his termination, claimant has not returned to work nor is there evidence from which I can conclude that he is medically capable of returning to employment that is substantially similar to the work that he was doing at the time of the injury, in light of his ongoing restrictions. Therefore, claimant is entitled to healing period benefits from October 2, 2017 through and including November 14, 2017 and from January 28, 2018 forward as

a running award until such time as healing period benefits may be appropriately terminated under Iowa Code section 85.34(1).

I conclude that October 2, 2017 through November 14, 2017 is 6.143 weeks and January 28, 2018 through February 21, 2018, the date of the hearing, is 3.571 weeks, for a total of 9.714 weeks. This amount multiplied by the rate of $358.98 per week is $3,487.13. Therefore, I reject the claimant's position concerning the amount of healing period owed as alleged in Exhibit 3.

5) Medical expenses, including mileage.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

Prudent persons customarily rely upon their physician's recommendation for medical care without expressly asking the physician if that care is reasonable. Proof of reasonableness and necessity of the treatment can be based on the injured person's testimony. Sister M. Benedict v. St. Mary's Corp., 255 Iowa 847, 124 N.W.2d 548 (1963).

It is said that "actions speak louder than words." When a licensed physician prescribes and actually provides a course of treatment, doing so manifests the physician's opinion that the treatment being provided is reasonable. A physician practices medicine under standards of professional competence and ethics. Knowingly providing unreasonable care would likely violate those standards. Actually providing care is a nonverbal manifestation that the physician considers the care actually provided to be reasonable. A verbal expression of that professional opinion is not legally mandated in a workers' compensation proceeding to support a finding that the care provided was reasonable. The success, or lack thereof, of the care provided is evidence that can be considered when deciding the issue of reasonableness of the care. A treating physician's conduct in actually providing care is a manifestation of the physician's opinion that the care provided is reasonable and creates an inference that can support a finding of reasonableness. Jones v. United Gypsum, File No. 1254118 (App. May 2002); Kleinman v. BMS Contract Services, Ltd., File No. 1019099 (App. September 1995); McClellon v. Iowa Southern Utilities, File No. 894090 (App. January 1992). This inference also applies to the reasonableness of the fees actually charged for that treatment.

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995).

The Court in Bell Bros. stated:

> We do not believe the statute can be narrowly construed to foreclose all claims by an employee for unauthorized alternative medical care solely because the care was unauthorized. Instead, the duty of the employer to furnish reasonable medical care supports all claims for care by an employee that are reasonable under the totality of the circumstances, even when the employee obtains unauthorized care, upon proof by a preponderance of the evidence that such care was reasonable and beneficial. In this context, unauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer.

Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010).

I have found above that claimant sustained a work-related injury to his right wrist/arm and it is clear that the same required medical treatment. I conclude that claimant was following the directions of his treating physicians and that the medical treatment as detailed in Exhibit 8 was reasonable, appropriate and causally related to the work injury and the treatment has been beneficial to claimant. I further find that the bills related thereto as set forth in Exhibit 6 and 7 are reasonable and appropriate and that defendants should be obligated to pay the same. Defendants are also obligated to pay the related medical mileage set forth in Exhibit 5, page 21 in the amount of $16.37.

Claimant also sought alternate care, specifically for the MRI recommended by Dr. Bolda and ongoing care. However the record does not indicate that any statement of dissatisfaction was made to the employer or insurance carrier as required for an award of alternate medical care under Iowa Code section 85.27(4) and the same is therefore denied. This does not prevent claimant from seeking alternate medical care as a separate action under Iowa Code section 85.27(4) after appropriate notification of dissatisfaction is provided. Neither should this decision preclude the employer from carrying out its obligation to provide reasonable medical care under Iowa Code section 85.27.

6) Penalty

Iowa Code section 86.13(4) provides that:

(a) If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or

insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, of chapter 85, 84A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed or terminated without reasonable or probable cause or excuse.

(b) The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts:

(1) The employee has demonstrated a denial, delay in payment, or termination of benefits.

(2) The employer has failed to prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.

(c) In order to be considered a reasonable or probable cause or excuse under paragraph "b", an excuse shall satisfy all the following criteria:

(1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.

(2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.

(3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

If weekly compensation benefits are not fully paid when due, section 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Weekly compensation payments are due at the end of the compensation week. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229, 235 (Iowa 1996).

Delay attributable to the time required to perform a reasonable investigation is not unreasonable. Kiesecker v. Webster City Meats, Inc., 528 N.W.2d 109 (Iowa 1995).

It is not unreasonable to deny a claim when a good faith issue of law or fact makes the employer's liability fairly debatable. An issue of law is fairly debatable if viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

If the employer fails to show reasonable cause or excuse for the delay or denial, the commission must impose a penalty in an amount up to 50 percent of the amount unreasonably delayed or denied. Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

Payments are "made" either when (a) the check addressed to a claimant is mailed or when (b) the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 236; Kiesecker, 528 N.W.2d at 112.

Penalty is not imposed for delayed interest payments. Davidson v. Bruce, 593 N.W.2d 833, 840 (Iowa 1999).

I conclude that claimant has shown a denial of healing period benefits.

I further conclude that defendants have failed to conduct a reasonable investigation or that any such investigation led to a decision to deny benefits. I further conclude that defendants have failed to contemporaneously convey the basis for the denial to the employee when the decision to deny benefits was made. Therefore, penalty benefits are appropriate. I conclude that based on the evidence presented a penalty near 50 percent is appropriate.

I have concluded above that claimant was off work and is owed healing period at the rate of $358.98 for the weeks from October 2, 2017 through and including November 14, 2017 and from January 28, 2018 through the hearing date of February 21, 2018 and continuing as a running award.

October 2, 2017 through November 14, 2017 is 6.143 weeks. January 28, 2018 through February 21, 2018 is 3.571 weeks. These total 9.714 weeks. I have accepted claimant's rate calculation of $358.98. The healing period to date of 9.714 weeks multiplied by $358.98 per week is $3,487.13. About 50 percent of that amount is $1,740.00

Defendants shall pay $1,740.00 in penalty benefits for their unreasonable denial of healing period benefits.

7) Costs

Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs allowable under commissioner rule are as follows:

> Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

876 IAC 4.33.

I conclude that claimant was successful in this claim and therefore exercise my discretion and assess costs against the employer in this matter as requested by claimant in the amount of exhibit 9, in the total amount of $106.59.

ORDER

IT IS THEREFORE ORDERED:

Defendants shall pay claimant healing period benefits from October 2, 2017 through November 14, 2017 and from January 28, 2018 forward, as a running award until such time as healing period benefits may be appropriately terminated under Iowa Code section 85.34(1).

All weekly benefits shall be paid at the rate of three hundred fifty-eight and 98/100 dollars ($358.98).

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded above as set forth in Iowa Code section 85.30.

Defendants shall pay claimant one thousand seven hundred forty and 00/100 dollars ($1,740.00) in penalty for their unreasonable denial of healing period benefits up to the date of the hearing.

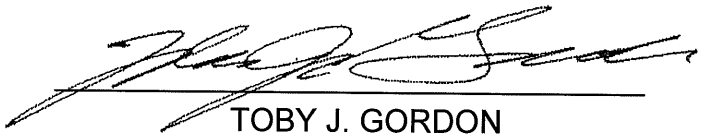
Defendants shall reimburse claimant for his out-of-pocket medical expenses as set forth in Exhibit 6 and shall pay, reimburse, and or otherwise satisfy all remaining medical expenses contained therein.

Defendants shall pay claimant medical mileage reimbursement in the sum of sixteen and 37/100 dollars ($16.37) as set forth in Exhibit 5.

Defendants shall pay costs of one hundred six and 59/100 dollars ($106.59).

Defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 28th day of February, 2018.



TOBY J. GORDON
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TJG/kjw

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.